

HOUSE BILL No. 1588

DIGEST OF INTRODUCED BILL

Citations Affected: IC 32-29-7-3.

Synopsis: Mortgage foreclosures. Amends the statute governing the foreclosure of mortgaged real estate to permit an enforcement authority that has issued an abatement order with respect to foreclosed property to file a praecipe for a sheriff's sale of the property if a person files a praecipe for sale, cancels the sale, and a sale does not take place within 180 days after the later of: (1) the filing of the judgment and decree; or (2) the elapse of three months after the date the complaint was filed.

Effective: July 1, 2015.

GiaQuinta

January 20, 2015, read first time and referred to Committee on Judiciary.



First Regular Session of the 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

HOUSE BILL No. 1588

A BILL FOR AN ACT to amend the Indiana Code concerning property.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 32-29-7-3, AS AMENDED BY P.L.66-2014,
2 SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2015]: Sec. 3. (a) In a proceeding for the foreclosure of a
4 mortgage executed on real estate, process may not issue for the
5 execution of a judgment or decree of sale for a period of three (3)
6 months after the filing of a complaint in the proceeding. However:
7 (1) the period is:
8 (A) twelve (12) months in a proceeding for the foreclosure of
9 a mortgage executed before January 1, 1958; and
10 (B) six (6) months in a proceeding for the foreclosure of a
11 mortgage executed after December 31, 1957, but before July
12 1, 1975; and
13 (2) if the court finds under IC 32-30-10.6 that the mortgaged real
14 estate has been abandoned, a judgment or decree of sale may be
15 executed on the date the judgment of foreclosure or decree of sale



is entered, regardless of the date the mortgage is executed.

(b) A judgment and decree in a proceeding to foreclose a mortgage that is entered by a court having jurisdiction may be filed with the clerk in any county as provided in IC 33-32-3-2. After the period set forth in subsection (a) expires, a person who may enforce the judgment and decree may file a praecipe with the clerk in any county where the judgment and decree is filed, and the clerk shall promptly issue and certify to the sheriff of that county a copy of the judgment and decree under the seal of the court. However, if:

(1) a praecipe:

(A) is not filed with the clerk within one hundred eighty (180) days after the later of the dates on which:

~~(A)~~ **(i) the period specified in subsection (a) expires; or**

~~(B)~~ **(ii) the judgment and decree is filed; or**

(B) is filed with the clerk within the one hundred eighty (180) day period described in clause (A), but:

(i) the person who filed the praecipe cancels the sale after filing the praecipe; and

(ii) the one hundred eighty (180) day period described in clause (A) elapses without the sale being held; and

(2) the sale is not:

(A) otherwise prohibited by law;

(B) subject to a voluntary statewide foreclosure moratorium; or

(C) subject to a written agreement that:

(i) provides for a delay in the sale of the mortgaged real estate; and

(ii) is executed by and between the owner of the mortgaged real estate and a party entitled to enforce the judgment and decree;

an enforcement authority that has issued an abatement order under IC 36-7-36-9 with respect to the mortgaged real estate may file a praecipe with the clerk in any county where the judgment and decree is filed. If an enforcement authority files a praecipe under this subsection, the clerk of the county in which the praecipe is filed shall promptly issue and certify to the sheriff of that county a copy of the judgment and decree under the seal of the court.

(c) Upon receiving a certified judgment under subsection (b), the sheriff shall, subject to section 4 of this chapter, sell the mortgaged premises or as much of the mortgaged premises as necessary to satisfy the judgment, interest, and costs at public auction at the office of the sheriff or at another location that is reasonably likely to attract higher



1 competitive bids. The sheriff shall schedule the date and time of the
2 sheriff's sale for:

- 3 (1) a date not later than one hundred twenty (120) days after the
4 date on which the judgment and decree under seal of the court are
5 certified to the sheriff by the clerk; and
6 (2) a time certain between the hours of 10 a.m. and 4 p.m. on any
7 day of the week except Sunday.

8 (d) Before selling mortgaged property, the sheriff must advertise the
9 sale by publication once each week for three (3) successive weeks in
10 a daily or weekly newspaper of general circulation. The sheriff shall
11 publish the advertisement in at least one (1) newspaper published and
12 circulated in each county where the real estate is situated. The first
13 publication shall be made at least thirty (30) days before the date of
14 sale. At the time of placing the first advertisement by publication, the
15 sheriff shall also serve a copy of the written or printed notice of sale
16 upon each owner of the real estate. Service of the written notice shall
17 be made as provided in the Indiana Rules of Trial Procedure governing
18 service of process upon a person. The sheriff shall charge a fee of ten
19 dollars (\$10) to one (1) owner and three dollars (\$3) to each additional
20 owner for service of written notice under this subsection. The fee is:

- 21 (1) a cost of the proceeding;
22 (2) to be collected as other costs of the proceeding are collected;
23 and
24 (3) to be deposited in the county general fund for appropriation
25 for operating expenses of the sheriff's department.

26 (e) The sheriff also shall post written or printed notices of the sale
27 at the door of the courthouse of each county in which the real estate is
28 located.

29 (f) If the sheriff is unable to procure the publication of a notice
30 within the county, the sheriff may dispense with publication. The
31 sheriff shall state that the sheriff was not able to procure the
32 publication and explain the reason why publication was not possible.

33 (g) Notices under subsections (d), (e), and (i) must contain a
34 statement, for informational purposes only, of the location of each
35 property by street address, if any, or other common description of the
36 property other than legal description. A misstatement in the
37 informational statement under this subsection does not invalidate an
38 otherwise valid sale.

39 (h) The sheriff may charge an administrative fee of not more than
40 two hundred dollars (\$200) with respect to a proceeding referred to in
41 subsection (b) for actual costs directly attributable to the administration
42 of the sale under subsection (c). The fee is:



1 (1) payable by the person seeking to enforce the judgment and
2 decree; and

3 (2) due at the time of filing of the praecipe;
4 under subsection (b).

5 (i) If a sale of mortgaged property scheduled under this section is
6 canceled, the sheriff shall provide written notice of the cancellation to
7 each owner of the real estate. Service of the written notice shall be
8 made as provided in the Indiana Rules of Trial Procedure governing
9 service of process upon a person. The sheriff shall charge a fee of ten
10 dollars (\$10) for notice to one (1) owner and three dollars (\$3) for
11 notice to each additional owner for service of written notice under this
12 subsection. The fee:

13 (1) is a cost of the proceeding;

14 (2) shall be collected as other costs of the proceeding are
15 collected; and

16 (3) shall be deposited in the county general fund for appropriation
17 for operating expenses of the sheriff's department.

18 The fee for service under this subsection shall be paid by the person
19 who caused the sale to be canceled.

